

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0777P**

**Withholding Tax  
Calendar Years 1995, 1996, 1997**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed on an audit completed on September 4, 1998.

Taxpayer was assessed a civil penalty for failure to file information returns in 1995 and 1997. It was also assessed a negligence penalty for failure to file withholding tax returns and pay the tax for the second half of 1997.

Taxpayer requests a waiver of penalty because the deficiency was primarily due to the bookkeeper/office manager's failure to remit tax due. Taxpayer states it hired the bookkeeper/office manager on or about January 1997 whose duties included accounts payable, billing, payroll, taxes, human resources, manager of office personnel and company policies, deposits, and standard bookkeeping procedures. The President of the company states that each week, the bookkeeper and he would discuss many topics including taxes. Each quarter, the President and his CPA would also meet and discuss the Profit and Loss Statements that the bookkeeper had prepared along with a number of other company items. On or about September 1997, the CPA, his assistant, the president of the company, and the bookkeeper had their third quarter meeting in which the bookkeeper showed a prepared profit and loss statement and balance sheets showing the company was having a very profitable year. The taxpayer believed it was ready to open 1998 with high expectation. In January

1998, the bookkeeper suddenly quit employment without notice. The President, suspicious, wondered why a person in his capacity would just quit, so he started looking into files in the bookkeeper's desk and found notices from the IRS for taxes not paid in 1997. Totally surprised, he called his CPA and took the IRS notices to his office. The CPA checked and found that all of the work done on the computer for 1997 had been deleted which took them totally by surprise. The President of the company checked with the alarm and security company and found that the bookkeeper had been there on a Sunday night at 6:30 and left approximately 30 minutes later. This had to be the time he deleted all of 1997. At this time, in March, the taxpayer called the software provider for help and found it would be a time consuming project to reconstruct 1997.

Due to the above circumstance, taxpayer requests a forgiveness of all penalty and interest due for 1997.

1. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer's audit revealed it had errors in almost every year of the audit. For the period May through December, no tax was paid. The department assessed a negligence penalty for failure to pay the tax due. Department and audit records show WH-3's and W-2's were not filed for 1995 and 1997. The penalty assessed was ten dollars (\$10) for each information return not filed as required by IC 6-8.1-10-6.

Taxpayer requests a waiver of penalty due to the bookkeeper's inattention to his job. The department finds, however, that errors were made in years other than 1997.

**FINDING**

Taxpayer's protest is denied.